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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

CHARLES R. HOOVER, HOWARD H. KARMAN, ROBERT D. MYERS and HAROLD J. WOLFINGER,

Petitioners, Cross-Respondents,

vs.

EDWARD RONWIN,

Respondent, Cross-Petitioner.

CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Respondent,
Cross-Petitioner, pro se

QUESTIONS PRESENTED FOR REVIEW

1. Did the Ninth Circuit err by affirming the dismissal as to the spouses of the individual defendants and err by affirming the dismissal as to the defendant, State Bar of Arizona?

2. Did the Ninth Circuit err in affirming the denial of recusal of the District Court judge?

3. Can a person be held mentally unable to practice law because such person expresses dissent?

4. Do the Fifth and Fourteenth Amendments, United States Constitution, require that applicants for licensure to practice any profession or vocation must be examined for their own abilities to practice and not be so examined that their abilities are determined as a function of their relative standing with respect to a group of examinees?

OTHER PARTIES BELOW[1]

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[1]The other parties below have been described in the Petition, fn. on p. A-1 and in fn. 1, p. i; and the item has been further amplified in fn. 1, Brief in Opposition. The texts of said footnotes are realleged herein as though set forth verbatim.

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OPINIONS BELOW

The Court of Appeals decision was rendered in Ronwin v. State Bar of Arizona, 686 F.2d 692 (9 Cir. 1982, as amended). The original decision, which was totally replaced by the amended decision, is published at 1981-2 Trade Cases (CCH) ¶64, 414. The trial court did not render an

opinion but entered a judgment. The judgments of both courts is reproduced in the Appendix to the Petition. The original decision of the Ninth Circuit is reproduced in Petitioners' Supplemental Appendix.

JURISDICTION

This Cross-Petition is filed pursuant to Rule 19.5 of this Court and within 30 days after March 6, 1983, the date that Cross-Petitioner received the Petition for a Writ of Certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution,

Fifth Amendment:

No person shall..be deprived of life, liberty, or property, without due process of law...

Fourteenth Amendment: Section 1

..No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;

nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

United States Statutes,

28 U.S.C.§144:

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding....

28 U.S.C.§455:

..(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party...

Arizona Revised Statutes,

§25-215

D. Except as prohibited in §25-214,either spouse may contract debts and otherwise act for the benefit of the community. In an action on such debt or obligation the spouses shall be sued jointly and the debt or obligation shall be satisfied: first, from the community property, and second, from the separate property of the spouse contracting the debt or obligation.

(added Laws 1973, Ch. 172, §64.)

STATEMENT OF THE CASE

Cross-petitioner hereby adopts the Statement of the Case given in the Petition, pp.3-5, as amplified in the Statement of the Case given in Respondent's Brief in Opposition, pp. 3-9, as though

set forth verbatim herein.

REASONS FOR GRANTING THE WRIT

If a Writ of Certiorari is granted pursuant to the Petition, then Respondent, Cross-Petitioner urges this Court to grant a Writ of Certiorari to consider the following issues:

1. Did the Ninth Circuit err by affirming the dismissal of the spouses of the individual defendants and by affirming the dismissal of the defendant, State Bar of Arizona?

The Ninth Circuit affirmed the dismissal as to the spouses of the individual, defendant committee members and as to the State Bar of Arizona on the grounds that "no specific allegations of wrongdoing have been made against the Bar," 686 F.2d 694, fn.1.

Arizona is a community property state. If the defendant committee members were found liable for damages to Ronwin, the question would arise as to whether or not

the tort is attributable to the marital community of each defendant,thereby enabling resort to the community property for satisfaction of the damage obligation. As noted in the dissent, 686 F.2d 701, fn.1, unless a prevailing plaintiff named the spouses as co-defendants, he is estopped from looking to the community property to satisfy the damage obligation, A.R.S. § 25-215(D), Eng. v. Stein, 123 Ariz. 343, 599 P.2d 796, 799 (1979). On any damage judgment for Ronwin, the question of the liability of the respective communities (and Ronwin pled that the communities were liable), is a fact question, which is phrased as follows in Howe v. Haught, 11 Ariz. App. 98, 462 P.2d 395, 397 (1970):

> ..The controlling question, in determining liability of the marital community for the tort of the spouse, is whether the tort is calculated to be, is done for, or results in a benefit to the community or is committed in the prosecution of community business...

The Ninth Circuit had no basis in the record for determining the liability of the respective communities.

The judgment of the Ninth Circuit carries the force of law. Does said judgment mean with respect to the dismissal of the spouses, that, as with the Act of Congress involved in Wissner v. Wissner, 338 U.S. 655, 70 S. Ct. 398, 94 L.Ed. 424 (1950) and as with the Treasury regulations involved in Free v. Bland, 369 U.S. 663, 82 S.Ct. 1089, 8 L.Ed.2d 180 (1962), the community property laws of Arizona, in particular A.R.S. § 25-215(D) do not hold as to Federal practice in Arizona and do not require the naming of spouses as co-defendants in Federal suits in order to reach a defendant spouse's share of his or her community property?

This Court's declaration on the matter would be helpful.

Ronwin pleaded that the conspiracy or combination included the State Bar of Arizona. Whether or not that is the case is again a fact question which the Ninth Circuit had no basis for determination; therefore, the State Bar of Arizona should not have been dismissed as a defendant.

2. Did the Ninth Circuit err in Affirming the Denial of Recusal of the District Court Judge?

The Ninth Circuit affirmed the refusal of the District Court judge to recuse himself, 686 F.2d at 700-701. Ronwin set forth several bases for recusal in an affidavit, supplemental affidavit and two subsequent motions. Ronwin's initial affidavit of Bias and Prejudice, relates how in another case presided over by Judge Manual L. Real, and involving Ronwin as plaintiff and, inter alia, John P. Frank, as defendant, Frank's attorney told Judge Real that:

> Your Honor, once again, I'm Jeremy Butler for my partner, John Frank, who is here in the courtroom from our law firm, Lewis & Roca. (emphasis added).

Then, Mr. Butler told Judge Real:

> In connection with what he [Ronwin] claims part of the conspiracy pages left out of the Record [the record of the special committee hearing of Jan. 6/7, 1975 which underlies Application of Ronwin,113 Ariz. 357, 555 P.2d 315 (1976)], I'm advised that Mr. Ronwin made his own provisions of what part of the Record he would enclose as a matter of economics. What he picked, we don't know. (parenthetical phrase added).

In response, Ronwin supplied Judge Real with an affidavit from the Court Reporter who prepared the Record,which affidavit identified John Frank as the party who ordered deletions from the record (such as instances of perjury by the only "expert" to testify against Ronwin). Furthermore, Frank's Answer to the motion in which the above remarks of Mr. Butler were quoted did not dispute the Court Reporter's

affidavit and said Answer admits that it was Frank who ordered the deletions.

Frank and Butler's action falsely attributed manipulation of an official record to Ronwin and also constituted a blatant, deliberate deception of Judge Real's Court by attorneys, which in Arizona is a misdemeanor, A.R.S. §32-265(1).

Judge Real took no action against Frank. Frank formerly served on this Court's committee on civil rules and has been and may still be Chairman of the Commission appointed by the President of the United States to make nominations for vacancies on the Ninth Circuit Court of Appeals. In view of Frank's connections, and the possibility that Judge Real could be a nominee for a judgeship on the Ninth Circuit bench, Judge Real's failure to act against Frank is bias and prejudice favoring Frank.

As another example: an exposition by

Ronwin of an anti-semitic incident at the Arizona State Univ. Coll. of Law about which the College's administration did nothing brought a comment from Judge Real which meant that if one was not Jewish, one had no business demanding steps to stop anti-semitism.

Ronwin brought other instances of Judge Real's bias and prejudice against Ronwin to Judge Real's attention.

The Ninth Circuit erred in relating the facts concerning Ronwin's allegation of ex parte communication between Judge Real and the counsel for the defendants (Philip von Ammon), 686 F.2d at 701, fn. 11. The fact is that counsel told Ronwin of his communication with Judge Real when Ronwin asked about the counsel's knowledge of Judge Real's itinerary subsequent to the communication, as alleged in Ronwin's Motion Requesting Recusal of Judge. Said counsel's denial is insufficient to over-

come the presumption of truth of the allegations in Ronwin's affidavits and motions requesting recusal; and, likewise, a judge is required to accept the truth thereof, United States v. Azhoear, 581 F.2d 735, 739 (9 Cir. 1978) cert.den. 440 U.S. 907 (1979), even if the judge knows such statements to be false, Hodgson v. Liquor Salesmens' Union, 444 F.2d 1344, 1348 (2 Cir. 1971). Thereby, "the judge's emphatic denials of Ronwin's allegations," 686 F.2d at 701, are irrelevant.

Although Judge Real may have been "on the bench" as when he heard the proof of Frank's deception, described above, it is hardly a judicial act for a judge to turn the other cheek to such a clear-cut, criminal action. Only bias and prejudice against Ronwin and in favor of Frank and the other defendants would permit Judge Real to fail to act. Similar bias and prejudice was revealed by the several other

instances upon which Ronwin based his request for Judge Real's recusal. The Ninth Circuit erred in affirming the denial of the recusal motions.

3. Can a Person be Held Mentally Unable to Practice Law Because Such Person Expresses Dissent?

In the Statement of the Case in Ronwin's Brief in Opposition, it is explained that the defendants claimed that Ronwin was mentally (and physically) unable to practice law because, inter alia, Ronwin had charged that the defendants had violated the Sherman Anti-Trust Act. Ronwin further explains that the Application of Ronwin is based on the allegedly expert testimony of a single party whose perjury is a matter of record and not denied by Justice Gordon of the Arizona Supreme Court who wrote Application of Ronwin. It is also noted that the labelling of Ronwin as "mentally unable" to practice

law was done in the face of overwhelming expert and lay testimony to the contrary as against the single perjured expert. The entire event, now entering its tenth year, is an horrendous abuse of law and judicial power and an insult to American constitutional ideals as embodied in the First, Fifth and Fourteenth Amendments.

This Court ought not allow the injustice to continue undisturbed.

4. Do the Fifth and Fourteenth Amendments, United States Constitution, Require That Applicants for Licensure to Practice any Profession or Vocation Must Be Examined for Their Own Abilities to Practice and Not Be So Examined That Their Abilities Are Determined As a Function of Their Relative Standing With Respect to a Group of Examinees?

As the Ninth Circuit noted, Ronwin had pled that the grading of the February, 1974 Bar examination was such that a predetermined number of persons were passed without regard to "..achievement by each Bar applicant of a pre-set standard [of

competence]," Complaint ¶VI, 686 F.2d at 695.

The practice of law, as well as the qualification therefor, is a right protected by the Fifth and Fourteenth Amendments, Willner v. Committee on Character and Fitness of New York, 373 U.S. 96, 83 S.Ct. 1175, 1180, 10 L.Ed.2d 224 (1963); Greene v. McElroy, 360 U.S. 474, 79 S.Ct. 1400, 1411 (1959). The right is clearly personal. Consequently, any examination for professional or vocational licensure must examine the applicant for his own abilities and not allegedly determine the applicant's abilities to practice by any scheme or procedure which, in effect, measures those abilities by their relative standing in a group or by grading on a curve.

The Ninth Circuit did not directly address this issue but it is pregnant in this case. Furthermore, the right to

practice a licensed profession or vocation affects substantial numbers of citizens; and, there are continual rows over licensing decisions in all fields. The issue merits this Court's attention.

CONCLUSION

For the foregoing reasons, if the Writ of Certiorari is granted pursuant to the Petition, then the Writ sought hereby should also be granted.

Respectfully submitted

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Cross-Respondents

Brief in Opposition to Cross-Petition for Certiorari to the United States Court of Appeals for the Ninth Circuit

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Brief in Opposition to Cross-Petition for Certiorari to the United States Court of Appeals for the Ninth Circuit

On March 23, 1983, Edward Ronwin filed his Cross-Petition for Certiorari from the United States Court of Appeals for the Ninth Circuit.

On March 23, 1983, the United States Supreme Court rendered its decision in *District of Columbia Court of Appeals, et al. v. Feldman, et al.*, 51 U.S.L.W. 4285 (No. 81-1335). In *District of Columbia Court of Appeals v. Feldman, supra*, the United States Supreme Court held that in bar admission decisions, lower federal courts "do not have

jurisdiction ... over challenges to state court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional." 51 U.S.L.W. at 4292.

Cross-Respondents hereby request that Cross-Petitioner's Petition be denied and that the decision of the United States Court of Appeals for the Ninth Circuit be vacated and remanded for reconsideration in light of *District of Columbia Court of Appeals v. Feldman, supra.*

CONCLUSION

For these reasons, Cross-Petitioner's Petition should be denied and the decision of the Ninth Circuit Court of Appeals should be vacated and the matter remanded to that court in light of *District of Columbia Court of Appeals v. Feldman, supra.*

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